

REMARKS

Reconsideration of the present application as amended is requested. In keeping with 37 CFR §1.121, the status of each of the 51 claims of this divisional application, as filed, is shown.

Please note that on the transmittal sheet with which the subject divisional application was originally filed, under "Other Amendments" a request was made to cancel Claims 1-31, 39-45 and 51. In the Amendment filed March 12, 2004, Claim 50 was canceled.

In the Office Action mailed May 24, 2004, Claims 32-38 and 46-49 were provisionally rejected under 35 USC §101 for claiming the same invention as that of Claims 32-38 and 46-49 of co-pending re-issue application Serial No. 09/859,692. The re-issue application seeks to re-issue U.S. Patent No. 5,905,514 which was granted on May 18, 1999, to Rhoads et al.

A review of the file history of the aforementioned re-issue application shows that in an Office Action mailed December 4, 2001, Claims 32-38 and 46-50 were withdrawn from consideration as being directed to a constructively non-elected invention, citing 37 CFR §1.142(b) and MPEP §821.03. Furthermore, said file history shows that in response to the December 4, 2001 Office Action, an amendment was filed in the USPTO on March 11, 2002. In the REMARKS portion of this amendment, the Applicants' attorney confirmed that "[n]ew claims 32-38 and 46-50 have been withdrawn from consideration and will form the subject matter of a divisional application(s) presently under consideration." Subsequent to this responsive amendment, the USPTO issued a Notice of Allowability, on or about February 20, 2003, which indicated that the allowed claims for the re-issue application were 1-5, 7-31, 39-45 and 51.

The subject patent application (Serial No. 10/085,345), is a divisional of the aforementioned re-issue application. Accordingly, since Claims 32-38 and 46-49 were withdrawn from the parent re-issue application (Serial No. 09/859,692), the rejection for double patenting under 35 USC §101 is improper, and withdrawal thereof is requested.

Also transmitted currently herewith is a Request for a One Month Extension of Time in which to Respond to the Office Action, along with the necessary Deposit Account authorization for the required fee.

Respectfully submitted,

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